

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

JASON DAVID COOPER, :
Petitioner, :
v. : 1:04-CV-33 (WLS)
CARL HUMPHREY, Warden, :
Respondent. :
_____ :

O R D E R

Before the Court is a Recommendation from United States Magistrate Judge Richard L. Hodge (Tab 25), filed July 26, 2005. It is recommended that Respondent Carl Humphrey's motion to dismiss be granted. The Magistrate Judge found that Petitioner's petition for relief was not timely filed under the provisions of the AEDPA, 28 U.S.C. § 2244(d). Petitioner has filed a timely written objection (Tab 25) to the recommendation.

Upon full review and consideration of the full record, the Court notes that Petitioner essentially reiterates and restates the same arguments presented to the Magistrate Judge. In sum, Petitioner contends and argues that he could not file his federal petition until he obtained the appropriate forms from the Clerk's office in the Middle and Southern Districts. First he erroneously requested habeas forms from the Southern District and then sought forms from the Middle District. Petitioner fails to understand or state that he could have filed a hand written document and it would have served as a valid petition for relief that could be amended later. His failure to obtain the "proper" forms is not a failure that tolls the statute of limitations. He also argues that since his legal materials were with the Center for Prisoner's Legal Assistance, Inc., (CPLA) for an extended period of time, he was further prevented from timely filing his petition. These arguments and more were presented to the Magistrate Judge. However, as correctly

pointed out by the Magistrate Judge, such delays in meeting the timeliness requirement of the AEDPA do not constitute “extraordinary circumstances” supporting the equitable tolling of the one-year limitations period. See Sandvik v. United States, 177 F.3d 1269 (11th Cir. 1999). These contentions were carefully reviewed and assessed by the Magistrate Judge under the applicable law. This Court agrees with the Magistrate Judge’s findings and stated reasons.

Upon full review and consideration upon record, the Court finds that said Recommendation (Tab 24) should be and hereby is, **ACCEPTED, ADOPTED** and made the order of this Court for reason of the findings made and reasons stated therein, together with the findings made and conclusions reached herein. Accordingly, Respondent Humphrey’s motion to dismiss is **GRANTED**. (Tab 9). Petitioner’s instant petition is **DISMISSED** as untimely.

SO ORDERED, this 16th day of September, 2005.

/s/W. Louis Sands
W. Louis Sands, Chief Judge
United States District Court